53D CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { EX. DOC. No. 19.

# PENSIONS TO SOLDIERS AND SAILORS WHO ARE INCAPACITATED FOR MANUAL LABOR.

## LETTER

FROM

## THE SECRETARY OF THE INTERIOR,

TRANSMITTING,

*Pursuant to House resolution of the 11th instant, information relating to the "Act granting pensions to soldiers and sailors who are incapacitated for manual labor."*

OCTOBER 16, 1893.—Referred to the Committee on Invalid Pensions and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
*Washington, October 16, 1893.*

SIR: I am in receipt of the resolution of the House of Representatives dated the 11th instant:

That the Secretary of the Department of the Interior be respectfully requested to communicate to the House of Representatives information relating to the act entitled "An act granting pensions to soldiers and sailors who are incapacitated for the performance of manual labor, and providing for pensions to widows, minor children, and dependent parents," approved June 27, 1890, as follows:

First. How many applications for pensions have been made under this law?

Second. How many claims were adjudicated and admitted prior to March 16, 1893, and how many were rejected?

Third. How many claims have been adjudicated and admitted since March 16, 1893, and how many have been rejected?

Fourth. What rules and regulations of the Department of the Interior, made in the construction of this act, as provided in section 2, were in force and effect prior to the 27th day of May, 1893, and what are the rules and regulations of the Department now?

In response thereto I have the honor to transmit herewith a copy of a letter from the Commissioner of Pensions and accompanying inclosures, to whom the matter was referred for report, setting forth the information desired.

Very respectfully,

HOKE SMITH,
*Secretary.*

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

DEPARTMENT OF THE INTERIOR,
BUREAU OF PENSIONS,
*Washington, October 13, 1893.*

SIR: I have the honor to acknowledge the receipt of your reference dated October 12, 1893, of a resolution of the House of Representatives of the United States under date of October 11, 1893, as follows:

*Resolved*, That the Secretary of the Department of the Interior be respectfully requested to communicate to the House of Representatives information relating to the act entitled "An act granting pensions to soldiers and sailors who are incapacitated for the performance of manual labor, and providing for pensions to widows, minor children, and dependent parents," approved June 27, 1890, as follows:

First. How many applications for pension have been made under this law?

Second. How many claims were adjudicated and admitted prior to March 16, 1893, and how many were rejected?

Third. How many claims have been adjudicated and admitted since March 16, 1893, and how many have been rejected?

Fourth. What rules and regulations of the Department of the Interior, made in the construction of this act as provided in section 2, were in force and effect prior to the 27th day of May, 1893, and what are the rules and regulations of the Department now?

First. How many applications for pension have been made under this law? The number, up to and including October 11, 1893, was as follows:

| | |
|---|---|
| Invalid, original | 517,396 |
| Invalid, additional | 120,821 |
| Total | 638,217 |
| Army widow (series) claims filed under act of June 27, 1890: | |
| Widows, original | 130,828 |
| Widows, additional | 1,309 |
| Minors, original | 12,537 |
| Minors, additional | 328 |
| Mothers, original | 14,981 |
| Mothers, additional | 373 |
| Fathers, original | 7,556 |
| Fathers, additional | 97 |
| Bothers and sisters | 98 |
| To 1 | 168,107 |
| Total invalid claims filed | 638,217 |
| Total widows' (series) claims filed | 168,107 |
| Grand total | 806,324 |

NOTE.—Under the head of additional are included those in which prior claims have been filed under former laws, whether admitted or not.

Second. How many claims were adjudicated and admitted prior to March 16, 1893, and how many were rejected? The number admitted prior to March 16, 1893, was as follows:

| | | |
|---|---|---|
| Original, Army, invalid | | 297,062 |
| Original, Navy, invalid | | 11,053 |
| Original, Army, widows, etc. | | 70,817 |
| Original, Navy, widows, etc | | 3,725 |
| Total original | | 382,657 |
| Additional, etc., Army, invalid | 74,977 | |
| Additional, etc., Navy, invalid | 1,357 | |
| | | 76,334 |
| Total issue of all classes | | 458,991 |

And the number rejected under said law prior to March 16, 1893, was as follows:

| | |
|---|---|
| Original invalid | 81,114 |
| Original, widows, minors, and other dependents | 12,533 |
| Total | 93,647 |

Third. How many claims have been adjudicated and admitted since March 16, 1893, and how many have been rejected? The number adjudicated and admitted since March 16, 1893, up to and including October 10, 1893, is as follows:

| | | |
|---|---|---|
| Original, Army, invalid | | 6,507 |
| Original, Navy, invalid | | 352 |
| Original, Army, widows | | 14,521 |
| Original, Navy, widows | | 574 |
| Total original | | 21,954 |
| Additional, etc., Army, invalid | 2,482 | |
| Additional, etc., Navy, invalid | 34 | |
| | | 2,516 |
| Total issues of all classes | | 24,470 |

The number rejected under the act of June 27, 1890, between March 16, 1893, and October 10, 1893, was as follows:

| | |
|---|---|
| Original, invalid | 58,612 |
| Original, widows, minors, and other dependents | 3,428 |
| Total | 62,040 |

Fourth. What rules and regulations of the Department of the Interior, made in the construction of this act, as provided in section 2, were in force and effect prior to the 27th day of May, 1893, and what are the rules and regulations of the Department now?

In compliance with this part of the resolution, I transmit herewith copies of all the rules, orders, and decisions touching the construction of not only the second section of the act of June 27, 1890, but likewise those affecting the entire act.

In all periods of the history of the Department, whenever sufficient facts have been brought to the attention of the Commissioner primarily to impeach the title or to show that the claimant should be reduced or dropped, it has been the practice by immemorial usage to suspend the payment pending investigation of such facts. The only modification of this practice is that which is contained in Order No. 240, issued August 26, 1893, which is made a part of this report and appended thereto.

Very respectfully,

D. I. MURPHY,
*Acting Commissioner.*

The SECRETARY OF THE INTERIOR.

---

ORDER NO. 194.

DEPARTMENT OF THE INTERIOR, BUREAU OF PENSIONS,
*Washington, March 20, 1893.*

For the purpose of carrying out the instructions of the honorable Secretary of the Interior issued in the case of Charles B. Mullins, late of Company F, Eighty-fifth Indiana Volunteers, the following rules will be observed:

(1) In all claims under the act of June 27, 1890, where the only disability alleged or shown is that for which the applicant is pensioned under some other law, the best obtainable evidence, medical, if possible, should be required, showing whether the

increased disability reported by the examining surgeons existed at the date of filing the application under said act, and continued in that degree up to the date of the medical examination.

If this evidence has not been filed when the claim is reached in its regular order for adjudication, the claimant should be called upon to elect whether he will take pension under the act of June 27, 1890, or accept increase (if any should be allowed) under the law under which he was pensioned, and he should be fully advised that if he elects to take the increase under his original certificate no new application is necessary, but that his application under the act of June 27, 1890, will be accepted as an application for increase under the old law.

(2) In all claims under section 2 of the act of June 27, 1890, other than those referred to above, where the first medical examination, showing a ratable degree of disability, was made more than three months after the date of filing the application, the applicant should be required to show, by the same class of evidence as that above described, the existence and degree of disability from all causes not due to vicious habits at the date of filing the application and thereafter until the date of said medical examination. The same rule will apply to cases wherein increase of pension is claimed on disabilities additional to those for which the applicant is pensioned under former laws.

(3) In all cases where the disabilities shown upon medical examination are of such a nature as to lead to the presumption that they have existed in an unchanging degree since a period prior to the date of filing the application under said act, the question as to whether the evidence above referred to shall be required should be referred to the medical referee for his decision.

ANDREW DAVIDSON,
*Acting Commissioner.*

To CHIEF OF DIVISION.

---

ORDER NO. 205.

DEPARTMENT OF THE INTERIOR, BUREAU OF PENSIONS,
*Washington, D. C., April 25, 1893.*

In claims of officers and enlisted men who served in the Army or Navy of the United States, and who are applying for pension under the act of June 27, 1890, pension can not be granted for disabilities which are the result of vicious habits.

(1) In these claims proof must be made by the affidavits of not less than two credible witnesses that, to the best of their knowledge and belief, the disability or disabilities are not the result of vicious habits, and their means of knowledge and the basis of such belief should also be stated.

(2) The board of examining surgeons, or the examining surgeon, should insert in the certificate of examination that the applicant's disability or disabilities did not, in his or their judgment, originate from vicious habits, if the objective symptoms warrant that statement. But if said symptoms shall appear to show that the disability or disabilities did originate from vicious habits, a statement to that effect should appear in the certificate of examination.

D. I. MURPHY,
*Acting Commissioner.*

---

ORDER.

DEPARTMENT OF THE INTERIOR, BUREAU OF PENSIONS,
*Washington, D. C., June 1, 1893.*

The chief of the record division is hereby directed to proceed at once to classify all claims filed under the act of June 27, 1890, since the passage of said act, so as to show separately the total number received to May 31, 1893, in each class, viz, invalids, widows, minors, mothers, and fathers; and also in each class separately the number of originals, additionals, and renewals.

From and after this date all weekly reports from the record division of the number of claims received will contain this classified information, brought up to their respective dates, in addition to the data now furnished.

WM. LOCHREN,
*Commissioner.*

ORDER NO. 226.

DEPARTMENT OF THE INTERIOR, BUREAU OF PENSIONS,
*Washington, D. C., June 9, 1893.*

To properly comply with the order of the honorable Secretary of the Interior of May 27, 1893, revoking Order No. 164 and directing the Commissioner to "have an examination made to determine what pensions have heretofore been allowed under section 2 of the act approved June 27, 1890, in disregard of the terms said act and in conflict with the ruling of this Department in the case of Charles T. Bennett," it is deemed necessary to organize a board of revision.

The following named gentlemen are hereby detailed as members of this board, viz:

J. R. Van Mater (acting chief).
Denis Kerr.
Charles M. Bryant.
Thomas W. Dalton.
Herbert W. Olmstead.
Joseph Loughran.
Thomas G. Randall.
Henry H. Hough.
Thomas H. Dawson.
William W. Van Loan.
Dr. Thomas D. Ingram.
Dr. August B. Coolidge.
Thomas De Loach.
Thomas P. Randolph.
John J. Freeland.
Winfield F. Works.
William J. McDonald.
Charles B. Hemingway.
Paul Kelso.
John M. Williamson.
Dr. John F. Keenan.
Dr. W. W. Fierce.
Dr. James K. Boude.

The duties of the board of revision shall be to draw from the admitted files, as rapidly as may be practicable, all cases allowed under section 2 of the act of June 27, 1890, and to determine whether the allowances are in accordance with law.

The board will act under the immediate supervision and direction of the Commissioner, who will give proper instructions as needed.

The chief clerk will see to it at once that proper accommodations are provided for the board and will detail the necessary force of typewriters, file clerks, and messengers as soon as an organization is effected.

WM. LOCHREN,
*Commissioner.*

---

ORDER NO. 225.

DEPARTMENT OF THE INTERIOR, BUREAU OF PENSIONS,
*Washington, D. C., June 9, 1893.*

As to adjudicating and fixing rates of pensions under the act of June 27, 1890.

(1) A claim for pension under the second section of the act of June 27, 1890, can only be allowed upon proof of mental or physical disability of a permanent character, not the result of the claimant's own vicious habits, incapacitating him from the performance of manual labor in such a degree as to render him unable to earn a support.

(2) No specific injury or disability can, as such, have a pensionable rating under that act, nor be considered otherwise than as it effects the capacity of the claimant to perform ordinary manual labor.

(3) Proof that the disability is not the result of the claimant's own vicious habits is requisite, and therefore the causes and circumstances of the origin of the disability should be shown by the evidence furnished in support of the claim for pension, so far as can be done, and by persons other than the claimant.

(4) To give the claimant a pensionable status under this act the disability must be such as to incapaciate him from the performance of manual labor in such a degree as to render him unable to earn a support; yet the act recognizes differences in the degree of such pensionable disability, giving $12 per month in case of the greatest and $6 per month in case of the lowest degree of pensionable disability rendering the claimant unable to earn a support by manual labor. It also provides for intermediate ratings, proportioned for the intermediate degrees of such pensionable disability. The proper ratings under this act will therefore be made in accordance with such rules for rating as the medical referee shall prescribe, subject to the approval of the Commissioner of Pensions.

WM. LOCHREN,
*Commissioner.*

Approved:

HOKE SMITH,
*Secretary.*

ORDER NO. 228.

DEPARTMENT OF THE INTERIOR, BUREAU OF PENSIONS,
*Washington, D. C., June 15, 1893.*

It is hereby directed that all admitted cases under the act of June 27, 1890, in which a special investigation is desired in a claim therewith filed under the general law, shall first be forwarded to the board of revision for immediate action under Order 226.

WM. LOCHREN,
*Commissioner.*

---

ORDER NO. 230.

DEPARTMENT OF THE INTERIOR, BUREAU OF PENSIONS,
*Washington, D. C., June 27, 1893.*

All cases under the act of June 27, 1890, in which a pension under the general law has elapsed by reason of allowance under this act, and in which dropping from the rolls is now recommended, shall be indorsed by the medical division, in addition to the formula for dropping, "Entitled to renewal under the general law at * * * if the claimant so elects."

All cases of this character which have passed through the medical division without such indorsement shall be returned to that division for the action indicated above.

WM. LOCHREN,
*Commissioner.*

---

DEPARTMENT OF THE INTERIOR, BUREAU OF PENSIONS,
*Washington, D. C., July 12, 1893.*

SIR: In order to prevent an unnecessary accumulation of June 27, 1890, cases in the medical division, to facilitate the revision of said cases, and to have the same in position that they may be readily found when wanted you are hereby instructed to forward no more cases directly to the medical division, but instead thereof to forward to the medical referee the usual reference slips heretofore used touching same, and to return said cases to the place from which they came; *i. e.*, to the admitted files or to the respective divisions, as the case may be.

In case of pending claims under act of June 27, 1890, and in order that the respective adjudicating divisions may not dispose of such cases until the opinion of the medical referee shall have been had thereon, you are instructed to place on the outside of the jacket of each case returned to the pending files of the respective divisions a slip upon which shall be stamped or written the words, "Board of revision," with your fac simile signature attached thereto; and this shall be taken to mean that the respective adjudicating divisions shall not take up and dispose of or take any action looking to the adjudicating of said claims under act of June 27, 1890, until the medical referee shall have called for same in due course of business and taken action thereon, in accordance with the opinion desired by your board, pursuant to Order 225 of the honorable Secretary of the Interior.

WM. LOCHREN,
*Commissioner.*

MR. VAN MATER,
*Chief Board of Revision.*

---

ORDER NO. 236.

DEPARTMENT OF THE INTERIOR, BUREAU OF PENSIONS,
*Washington, D. C., August 5, 1893.*

In cases of pension heretofore suspended for lack of proof showing a pensionable degree of disability under the act of June 27, 1890, it is directed that the period within which the pensioners may furnish further evidence, or apply to this Bureau for examination by a medical board, be extended to October 19, 1893, and that no such pensioner be dropped for lack of such evidence before that date.

Let a copy of this order be mailed to all such pensioners as have not already acted upon the notice heretofore given.

WM. LOCHREN,
*Commissioner.*

ORDER NO. 240.

DEPARTMENT OF THE INTERIOR, BUREAU OF PENSIONS,
*Washington, August 26, 1893.*

In the reëxamination of all cases allowed under section 2 of the act of June 27, 1890, the practice of the Bureau is hereby changed and modified as follows:

First. Where it appears, prima facie on the face of the papers, that the pensioner was not entitled to any rating the payment of the pension shall be at once suspended and the pensioner notified that he will be dropped from the rolls after sixty days from such notice unless he shall in the meantime file competent evidence showing his right to pension.

Second. Where on the face of the papers it appears that the pensioner is entitled to a less rate than he is now receiving he shall be notified that his pension will be reduced to such less rate unless within sixty days from such notice he shall file competent evidence of his right to a higher rating.

Third. Where it appears on the face of the papers that the pensioner had been allowed a pension under a prior law and that he is not entitled under the act of June 27, 1890, to any higher rate of pension than was allowed under such prior law he shall be notified that his pension under the act of June 27, 1890, will be dropped and his pension under such prior law restored, unless, within sixty days from such notice, he shall file competent evidence that he is entitled to a higher rate than was granted by his pension under such prior law.

Fourth. Every such notice shall inform the pensioner that upon his application to the Commissioner he will be immediately ordered for examination by a local medical board, to enable him to obtain the necessary evidence to show his right to pension.

Fifth. When any pensioner shall have complied with the requirement of such notice, and furnished evidence tending to support his claim to be continued on the rolls, the case shall at once be a "special case," and be promptly adjudicated. There will be no preliminary suspension in any case hereafter, except as provided in the first subdivision of this order.

WM. LOCHREN,
*Commissioner.*

Approved:

HOKE SMITH,
*Secretary.*

---

ORDER NO. 241.

DEPARTMENT OF THE INTERIOR, BUREAU OF PENSIONS,
*Washington, D. C., September 2, 1893.*

The circular of June 12, 1893, in respect to rating cases under the act of June 27, 1890, is withdrawn.

Hereafter in affixing rates under this act the medical referee or the medical officer in the board of revision shall weigh each disability and determine the degree that each disability, or the combined disabilities, disables the claimant from earning a support by manual labor, and a rate corresponding to this degree shall be allowed.

In cases in which the pensioner has reached the age of 75 his rate shall not be disturbed if he is receiving the maximum, and if he is not a pensioner he shall receive the maximum for senility alone, if there are no special pensionable disabilities shown.

WM. LOCHREN,
*Commissioner.*

---

DEPARTMENT OF THE INTERIOR, BUREAU OF PENSIONS,
*Washington, D. C., September 13, 1893.*

CHIEFS OF DIVISIONS:

In the case of Sarah A. Morris, mother of John E. Morris, Eightieth Illinois Volunteer Infantry, No. 540928, Assistant Secretary Reynolds holds that where a soldier dies leaving a child over 16 years of age, and leaving a mother, such mother may file a claim under section 1 of the act of June 27, 1890, and pension may be allowed to her if she complies with the requirements of the law.

WM. LOCHREN,
*Commissioner.*

No. 1.

DEPARTMENT OF THE INTERIOR,
*Washington, D. C., May 27, 1893.*

*Assistant Secretary John M. Reynolds to the Commissioner of Pensions, May 27, 1893.*

Charles T. Bennett, late private Company F, Thirteenth Indiana Volunteers, filed his original application for an invalid pension under the provisions of the Revised Statutes, on July 5, 1886, alleging that while in the service and in line of duty at Raleigh, N. C., about June 1, 1865, he was prostrated by a sunstroke, from which resulted a disease of the head and loss of hearing.

The claim was rejected by your Bureau February 18, 1892, upon the ground that the evidence failed to establish the existence of any disability due to the claimant's army service.

From said action the claimant appealed March 19, 1892. The evidence shows that the appellant enlisted September 14, 1864, and was discharged June 23, 1865; but the records of the War Department, in evidence, show neither treatment for any disability during said period nor the existence of any disabling cause, but that he was carried on all rolls and returns as "present for duty" from enlistment to discharge.

The affidavits furnished in support of his claim do not satisfactorily establish the origin of the alleged disability, and in the certificate made by the board of examining surgeons at Vincennes, Ind., on November 3, 1886, the following language is found: "This man seems to be in vigorous health, and we discove no evidence of a diseased nervous system, not tremulous, but in good flesh, and looks as if he was never afflicted by any great nervous prostration. * * * We would state that he has slight deafness in both ears, but not of sufficient character to warrant us in making a rating." The rejection of the applicant's claim for invalid pension, for the reasons given, was proper and is affirmed.

This appeal brought up, also, the application made by the same claimant for a pension under the provisions of the second section of the act of June 27, 1890. Under this second section your Bureau, on January 29, 1891, granted to the claimant the maximum rating of $12 a month.

The only disability found to exist upon medical examination, as declared by your Bureau, was "slight deafness of both ears." This deafness was so slight, according to the certificate of the board of examiners, that he could hear a watch tick in each ear when it was within one-half inch of each.

To entitle the claimant to a pension under the provisions of the second section of the act of June 27, 1890, it was necessary that he should be suffering from a mental or physical disability of a permanent character not the result of his own vicious habits, which incapacitates him for the performance of manual labor in such a degree as to render him unable to earn a support; in which event he might be entitled to receive a pension not exceeding $12 per month and not less than $6 per month. As the claimant was suffering simply from "slight deafness," according to your finding, which was so slight that he could hear a watch tick one-half inch from each ear, the physical disability clearly failed to come within the requirements of the law. Such "slight deafness," of necessity, could not incapacitate for the performance of manual labor, and yet the claimant was allowed the largest sum provided for under this section of the act of June 27, 1890.

In order to ascertain with certainty the basis upon which this pension was rated the following communication was addressed to the Commissioner of Pensions:

DEPARTMENT OF THE INTERIOR,
*Washington, D. C., May 23, 1893.*

SIR: I herewith return to you the papers in the case of Charles T. Bennett, late private Company F, Thirteenth Indiana Volunteers, certificate No. 633762.

Please furnish me at your earliest convenience the basis of rating in this case, which places "slight deafness" of both ears, under act of June 27, 1890, at the rate of $12 per month.

Very respectfully,

JNO. M. REYNOLDS,
*Assistant Secretary.*

The COMMISSIONER OF PENSIONS.

To which the following answer was furnished through the Commissioner of Pensions:

DEPARTMENT OF THE INTERIOR, BUREAU OF PENSIONS,
*Washington, D. C., May 23, 1893.*

SIR: In response to your request that I prepare an answer to the communication of this date, addressed you by the honorable Assistant Secretary, concerning the basis of rating in this case, for a slight deafness of both ears, at $12 per month under the act of June 27, 1890, I have to say that this rate was allowed in accordance with Order No. 164, which directed "that all cases showing a pensionable disability which, if of service origin would be rated at or above $12 a month, shall be rated at $12 per month." The inability of the applicant to perform manual labor was not taken into consideration.

At the time of the action taken in this claim, January 29, 1891, the schedule rate for slight deafness of both ears was $15; hence the rate of $12 was allowed. Since December 4, 1891, the schedule rate for slight deafness of both ears has been $6, and such cases have been allowed at this rate since the above date. I have recently suspended action in this class of cases.

Very respectfully,

THOS. D. INGRAM,
*Medical Referee.*

Hon. WILLIAM LOCHREN,
*Commissioner of Pensions.*

The Department will now consider whether the method of rating followed in this case is in accordance with the law.

The second section of the act of June 27, 1890, provides as follows:

"SEC. 2. That all persons who served ninety days or more in the military or naval service of the United States during the late war of the rebellion and who have been honorably discharged therefrom, and who are now or who may hereafter be suffering from a mental or physical disability of a permanent character, not the result of their own vicious habits, which incapacitates them for the performance of manual labor in such a degree as to render them unable to earn a support, shall, upon making due proof of the fact according to such rules and regulations as the Secretary of the Interior may provide, be placed upon the list of invalid pensioners of the United States, and be entitled to receive a pension not exceeding twelve dollars per month and not less than six dollars per month, proportioned to the degree of inability to earn a support; and such pension shall commence from the date of the filing of the application in the Pension Office after the passage of this act, upon proof that the disability then existed, and shall continue during the existence of the same."

It will be seen that this section only provides for a pension where the applicant has been incapacitated for earning a support by manual labor. Incapacity to perform manual labor, to a degree which produces inability to earn a support, is the basis of pension under this section; yet the report of the medical referee shows that the pension was allowed by your Bureau, in this case, in pursuance of Order No. 164; and the inability of the applicant to perform manual labor was not taken into consideration.

The following is a copy of Order No. 164:

*In regard to fixing rates of pensions under act of June 27, 1890.*

That all claimants under the act of June 27, 1890, showing a mental or physical disability, or disabilities of a permanent character not the result of their own vicious habits, and which incapacitate them for the performance of manual labor, rendering them unable to earn a support in such a degree as would be rated under former laws at or above six dollars and less than twelve dollars, shall be rated the same as like disabilities of service origin; and that all cases showing a pensionable disability which, if of service origin, would be rated at or above twelve dollars per month, shall be rated at twelve dollars per month.

GREEN B. RAUM,
*Commissioner.*

Approved:

CYRUS BUSSEY,
*Assistant Secretary.*

It will be seen that this order required that all cases showing a pensionable disability under the act of June 27, 1890, should be rated as if of service origin.

The law applicable to pensions of service origin is found in the Revised Statutes, and is as follows:

"Any officer of the Army, including regulars, volunteers, and militia, or any officer in the Navy or Marine Corps, or any enlisted man, however employed, in the military or naval service of the United States, or in its Marine Corps, whether regularly mustered or not, disabled by reason of any wound or injury received or disease contracted while in the service of the United States and in line of duty, etc."

The only requirement to obtain a pension under this act is disability by reason of wound or injury received or disease contracted while in the service and in line of duty. Incapacity to perform manual labor, which is the foundation to the right to pension under the act of June 27, 1890, fixes an entirely different standard of disability from that just mentioned, contained in the Revised Statutes, covering injuries of service origin. Disabilities incurred while in actual service and incapacity coming upon applicant long after service ceased are made by the law to stand upon an entirely different footing. Those incurred during service and in line of duty are pensionable without regard to capacity to earn a support, and are graded without reference to this condition. Disabilities resulting from causes other than of service origin are only pensionable when incapacity to labor joins with incapacity to earn a support, and the grades of rating are dependent upon these two conditions. When, by Order No. 164, it was declared that disabilities under the act of June 27, 1890, should be rated as of service origin the very principle which governed the rating under the act of June 27, 1890, was displaced and a rule applicable to a different act was substituted.

This case illustrates the effect of the departure by your Bureau from the terms of the act of 1890:

(1) The applicant was awarded for "slight deafness" not of service origin $12. The award was made under the act of 1890. It was given by your Bureau for "slight deafness," because under an entirely different act, applicable to disabilities of service origin alone, $15 was the lowest rating for "slight deafness."

(2) "The inability of the applicant to perform manual labor was not taken into consideration." Yet the act of 1890, under which the applicant sought and was allowed a pension, made inability of the applicant to perform manual labor, in such a degree as to prevent him from earning a support, the foundation of his claim.

It is therefore clear that the rating under the Revised Statutes for disabilities of service origin was substituted by Order No. 164 for the rating provided under the act of 1890.

The order having resulted in one error, a second error naturally followed, and the inability of the applicant to perform manual labor was not taken into consideration. In a word, the act of June 27, 1890, was changed and superseded by Order No. 164, as construed by your Bureau, and by a practice that neglected to take into consideration the ability of the applicant to perform manual labor.

It is hardly necessary to present argument or to support by authority the proposition that neither the Secretary nor the Commissioner can by order or practice supersede an act of Congress. The power of the Department, so far as orders and practice are concerned, is limited to an execution of the law; it ceases when an effort is made to supersede the law.

You will, therefore, take such steps as are necessary to reopen this case and to pass upon it in accordance with the provisions of the act of Congress approved June 27, 1890, disregarding any order or practice which is in conflict with the plain letter of the law.

The foregoing decision was approved by the honorable Secretary of the Interior, and was by him submitted to the honorable Attorney-General, who also approved it. After this concurrence the following order was made revoking the one dated October 15, 1890, numbered 164, referred to therein:

DEPARTMENT OF THE INTERIOR,
*Washington, D. C., May 27, 1893.*

SIR: Order No. 164, signed, "Green B. Raum, Commissioner of Pensions," and approved, "Cyrus Bussey, Assistant Secretary," of date, October 15, 1890, is hereby revoked.

You will prepare, for approval of the Secretary, new rules and regulations covering the proof of the right to pensions and rates of same in accordance with the provisions of section second of the act of Congress approved June 27, 1890.

Your attention is directed to the fact that the disabilities which are pensionable under this section must be of a permanent character, incapacitating for the performance of manual labor to such a degree as to produce inability to earn a support. You will observe, also, that the rate of pension is fixed at not less than $6 nor more than $12 per month, proportioned to the degree of inability to earn a support.

You will have an examination made to determine what pensions have heretofore been allowed under section second of the act approved June 27, 1890, in disregard of the terms of said act and in conflict with the ruling of this Department in the case of Charles T. Bennett, this day transmitted to you.

Respectfully,

HOKE SMITH,
*Secretary.*

The COMMISSIONER OF PENSIONS.

---

ORDER NO. 225.

DEPARTMENT OF THE INTERIOR, BUREAU OF PENSIONS,
*Washington, D. C., June 9, 1893.*

As to adjudicating and fixing rates of pensions under the act of June 27, 1890.

(1) A claim for pension under the second section of the act of June 27, 1890, can only be allowed upon proof of mental or physical disability of a permanent character, not the result of the claimant's own vicious habits, incapacitating him for the performance of manual labor in such a degree as to render him unable to earn a support.

(2) No specific injury or disability can, as such, have a pensionable rating under that act, nor be considered otherwise than as it affects the capacity of the claimant to perform ordinary manual labor.

(3) Proof that the disability is not the result of the claimant's own vicious habits is requisite; and therefore the causes and circumstances of the origin of the disability should be shown by the evidence furnished in support of the claim for pension so far as can be done, and by persons other than the claimant.

(4) To give the claimant a pensionable status under this act the disability must be such as to incapacitate him for the performance of manual labor in such a degree as to render him unable to earn a support; yet the act recognizes differences in the degree of such pensionable disability, giving $12 dollars per month in case of the greatest and $6 dollars per month in case of the lowest degree of such pensionable disability rendering the claimant unable to earn a support by manual labor. It also provides for intermediate ratings proportioned to the intermediate degrees of such pensionable disability. The proper ratings under this act will, therefore, be made in accordance with such rules for rating as the medical referee shall prescribe, subject to the approval of the Commissioner.

WM. LOCHREN,
*Commissioner.*

Approved:

HOKE SMITH,
*Secretary.*

---

No. 4.

*Assistant Secretary John M. Reynolds to the Commissioner of Pensions, August 15, 1893.*

DEPARTMENT OF THE INTERIOR,
*Washington, D. C., August 15, 1893.*

Upon the motion of Joseph H. Hunter, attorney, I have carefully considered the decision rendered April 1, 1893, by the late Assistant Secretary Cyrus Bussey relative to the fee to be allowed in the pension claim (certificate No. 465863) of Joseph P. Smith, formerly a private in Company I, Fourteenth Pennsylvania Volunteers, and have reached the conclusions hereinafter stated.

The said Joseph P. Smith was pensioned under the act of June 27, 1890, at the rate of $6 per month on account of inability to earn a support by manual labor because of disease of lungs, stomach, and back. On the 11th of May, 1891, he filed an application for increase of pension, alleging that he was suffering from rheumatism and partial anchylosis of right elbow from an injury. Joseph H. Hunter, of this city, was appointed attorney in the claim. The only evidence called for was the affidavit of the claimant as to the time and manner of the incurrence of said injury and disease. This evidence was filed by Mr. Hunter. The certificate of medical examination completed the claim. A certificate allowing the rate of $8 per month from the 11th of May, 1891, was issued on the 1st of February, 1893. A fee of $2 was paid to Mr. Hunter. Upon the appeal of Mr. Hunter your Bureau proposed to allow a fee of $10. The Department, in the decision of April 1, 1893, disapproved the action you proposed to take, holding that the fee should not exceed $2. The attorney in the case now asks that said decision be reconsidered.

Claims under the act of June 27, 1890, differ essentially from those under prior laws as to the proof required and the ground upon which the pension is to be allowed. The only evidence required pertaining to the origin of the disability upon which a claim under the act of June 27, 1890, is based is evidence that it did not result from vicious habits, while in claims based upon disability made under prior laws the origin of the disability in the service and line of duty must be proved to establish the right to pension. The basis of pension under the act of June 27, 1890, is also different from that under prior laws. The pension under the act of June 27, 1890, is for inability to earn a support by manual labor without regard to the causes of such inability, with single restriction before referred to. (See decision of August 17, 1892, in the claim of Washington Borden, and that of May 27, 1893, in the claim of Charles T. Bennett.)

Claims for increase of pension under the act of June 27, 1890, upon whatever cause based, are, therefore, in the nature of claims for increase of pension on account of increase of the disability for which pension was originally allowed—that is, for increase of inability to earn a support by manual labor. The fee, in claims for increase of pension under said act, must, therefore, be fixed under the fourth proviso to the pension appropriation act of March 3, 1891, which directs "that hereafter no agent or attorney shall demand, receive, or be allowed any compensation under existing law exceeding two dollars in any claim for increase of pension on account of increase of the disability for which the pension has been allowed."

The fact referred to by Mr. Hunter that in a claim under the act of June 27, 1890, in which a new cause of disability is alleged and established as existing at the date of the application, the increase of pension will commence from the date of filing the application, while in the other cases it will commence from the date of the certificate of medical examination made under the claim, has no bearing upon the question involved in this case, as both classes of claims are claims for increase of pension on account of diminished capacity to earn a support by manual labor, which is the basis of the original and all subsequent allowances. They are essentially claims for increase of pension on account of increase of the disability for which pension has been allowed, and the fee must be governed by the law relating to fees in that class of claims.

The view that the fee in the case under consideration should be $2 is adhered to.

---

## No. 5.

DEPARTMENT OF THE INTERIOR,
*Washington, D. C., August 18, 1893.*

*Assistant Secretary John M. Reynolds to the Commissioner of Pensions, August 18, 1893.*

On June 17, 1893, you submitted to the Department the papers in the claim of Timothy L. Carley, late of Company K, One hundred and eighty-fifth New York Volunteers, Certificate No. 841972, inviting attention to an opinion by the law clerk of your bureau relative to rulings Nos. 251 and 256, as affecting the date of commencement of pensions granted under the act of June 27, 1890, which you recommend should be rescinded in part.

The second section of said act provides that pensions granted thereunder "shall commence from the date of the filing of the application in the Pension Office, after the passage of this act, upon proof that the disability *then* existed, and shall continue during the existence of the same."

Rule 251 provides that where a declaration alleges a disability, but said disability is not found on medical examination, and the case is reopened on sworn statements as to the existence of the disability, and a new examination establishes the existence of the disability, pension shall begin with the date of the second examination. But where a declaration is filed and the claim is rejected, and a second declaration is filed and a second examination made, pension shall date from filing the second declaration.

Rule 256 provides that where there is not conclusive proof that the increased degree of disability existed prior to the medical examination, the increased rate shall not commence prior to the date of the medical examination. And if the claimant elects to take under the act, the issue thereunder shall allow the old-law rate from the date of filing to the date of examination, and thereafter the increased rate.

In the claim referred to, claimant filed an application August 14, 1890, claiming pension under the second section of the act of June 27, 1890, which was rejected January 26, 1892, on the ground that no pensionable disability under the act was shown to exist.

February 17, 1892, he filed an affidavit asking that the claim be reopened, alleging that a ratable degree of disability *did* exist. He filed another affidavit September 2, 1892, to the same effect, and accompanying affidavits in support thereof, whereupon the claim was reopened, and he was again examined by a board April 13, 1892, and again November 16, 1892, when it was certified that a pensionable degree of disability existed.

Under the evidence, pension was allowed at $12 per month from the date of filing his affidavit to reopen the claim. It is claimed that the pension should have been made to commence from the date of filing the original application, August 14, 1890.

This contention would be correct had it been shown by the evidence that the disability for which the pension was granted existed at that time.

Your bureau, in the adjudication of claims under this act, has assumed that pensions may be made to commence at other dates than that of filing the application in the Bureau of Pensions.

In the case of Jos. B. King (before the Department of the Interior April 11, 1893), his pension was made to commence from the date of *incurrence* of his disability (broken legs), *subsequent* to the date of filing his original application and *prior* to the date of filing his declaration alleging such disability and the medical examination had under the claims.

In the case of Andrew Shelley (U. S. Navy, No. 28063) his pension was made to commence from the date of the medical examination first showing a pensionable degree of disability.

In the case of Oliver P. Covell (Cert. No. 639349) the pension was made to commence from the date of a revised schedule of rates under the general law for certain disabilities, not specified by law, December 4, 1891.

We have here four different methods of fixing the date of commencing pension granted under the act of June 27, 1890, exclusive of the one provided in the statute.

By this action your Bureau appears to have assumed that a claimant's title to pension under said act depends on proof of the following conditions only, viz:

1. That he served ninety days or more in the military or naval service of the United States during the late rebellion. 2. That he has been honorably discharged from such service. 3. That he is suffering from a mental or physical disability (*a*) of a permanent character (*b*) not the result of his own vicious habits (*c*) which incapacitates him for the performance of manual labor (*d*) in such a degree as to render him unable to earn a support; that when these conditions have been established, the right to pension is complete, and a certificate must then be issued; that fixing the date of the commencement of the pension is merely incidental, and must be determined by the circumstances of the case, and that the provision of the section declaring that the pension shall commence from the date of filing the application in the Bureau of Pensions is only operative when the proof shows that the disability then existed; but that if the disability did *not* exist at such date—but it should be shown that it did exist at a subsequent date—then the pension might be made to commence at a date other than that of filing such application.

If proof of the facts before mentioned is all that is required to entitle a claimant to a certificate, then no application is necessary. The pensionable condition is proved and, if the contention is tenable, it is then only required to fix the date of the commencement of the pension.

The act of January 29, 1887, granting pensions to soldiers and sailors of the Mexican war, the provisions of which are similar to those of the act of June 27, 1890, provides pensions for those who, being duly enlisted, actually served sixty days with the Army or Navy of the United States in Mexico, or on the coasts or frontier thereof, or *en route* thereto, in the war with that nation, or were actually engaged in a battle in said war and were honorably discharged: *Provided*, That such person is or becomes sixty-two years of age, or becomes subject to any disability or dependency equivalent to "some cause prescribed or recognized by the pension laws of the United States as a sufficient reason for the allowance of a pension."

Would it be contended that, under said act, a person having all the other qualifications which would entitle him to a pension, except being subject to the disability of dependency, or being sixty-two years of age, could file a claim and wait until he *became* disabled or arrived at the age of sixty-two years, and, by thereafter proving these conditions, be pensioned under said application? In other words he says: "I have no pensionable standing now, but may have hereafter, so I will file my declaration and wait until such pensionable condition shall arise." I think it is clear that under such circumstances he would be required to file another declaration after his pensionable condition arose.

If the act authorizes the commencement of a pension granted thereunder from any date other than the date of filing the application therefor in the Bureau of Pensions, from what other date shall or can it be made to commence? The statute is silent on this point. If any other date for the commencement of the pension is fixed it must be done arbitrarily. When you leave the only date mentioned in the statute to seek

another from which the pension may be made to commence you are at sea, as has been demonstrated in the claims above referred to, adjudicated under this act by your Bureau, presumably under Orders 251 and 256.

No authority can be found in the act of 1890 focommencing a pension from the date of the disability, as was done in the Jos. B. King case, and the only statute that does confer such authority in any case is the second section of the act of March 3, 1879, and such provision in that act is expressly limited to pensions granted on account of disabilities of *service origin*, or death occurring from a cause which originated *in* the service, and is not applicable to the act in question.

Neither does the act of 1890 authorize the commencement of a pension from the date of the certificate of the medical examination establishing the disability, as was done in the Andrew Shelley case under ruling 251, before referred to.

The only statute existing providing that pension may commence from the date of the medical examination is section 4698½, R. S., and such section applies to claims for increase only.

No statute can be found which would authorize the action had in the case of Oliver P. Covell or that in the case now under consideration.

All provisions relating to the subject of commencement of pensions other than those contained in the act of June 27, 1890, and the several acts of Congress providing pensions for service during the war of 1812 and Mexican and Indian wars, relate solely and are expressly limited to pensions granted on account of death occurring from a cause which originated in the service, or for disabilities in consequence of wounds or injuries received, or disease contracted in the service and line of duty, while the act of 1890 relates to pensions granted for causes not due to the service.

So the act of June 27, 1890, and those above enumerated stand alone as to the date of commencement of the pensions granted thereunder.

Section 2 of the act of 1890 provides that "such pension shall commence from the date of filing of the application in the Pension Office, after the passage of this act, upon proof that the disability then existed." No other date is suggested by said act when pensions granted thereunder may or might commence. No words can be found in the statute whereby it can be reasonably inferred that Congress intended to assume any date from which a pension granted under said section should commence other than the date of filing the application in the Bureau of Pensions, after the passage of the act, and then only "upon proof that the disability then existed." This proof is as essential as the filing of an application. Both together constitute an essential condition to the allowance of pension, for the reason that in the absence of either there is no authority of law for commencing the pension. Proof of the conditions named in the first part of the section confers a pensionable *status* upon the applicant, but his title to receive the pension is not completed until he files an application and proves that at the date of filing there existed a pensionable condition. If the evidence fails to show that a claimant was entitled to a pension when he filed his application, the claim is inadmissible for lack of proof, and the same must be rejected, for otherwise the pension must begin, either at a date subsequent to the application, which is in direct conflict with the terms of the act, or at the date of filing, which would be granting a pension for a period, in part, when no disability existed.

Before a pension can be granted an application must be filed claiming one, and alleging a pensionable condition as then existing, for it is clear that it was not intended to provide for filing claims when no pensionable disability existed, so as to cover a right subsequently accruing and in anticipation thereof.

No authority being conferred by the act for commencing a pension granted under the second section from any date other than the date of filing the application in the Bureau of Pensions, or for granting such pension except on proof that the disability existed at the date the application therefor was filed in the Bureau of Pensions, the practice in the Bureau to the contrary was erroneous.

After a careful consideration of the questions presented by your communication, the Department has arrived at the following conclusions:

1. All pensions granted to dependent parents under the first section of the act of June 27, 1890, should commence from the date of filing the application under said act.

2. All pensions granted under the second section of the act, for disabilities which incapacitate for the performance of manual labor in such a degree as to render the claimant unable to earn a support, should commence from the date of filing the application therefor in the Bureau of Pensions, after the passage of said act, upon proof that a pensionable disability under the act existed at the time such application was filed.

3. Pensions granted to widows or minor children under the third section of said act should commence from the date of the application for such pension, after the passage of said act, and after the death of the soldier; and in case of a minor after the death or remarriage of the widow.

4. No claim filed under this act shall be deemed or held to be a claim for increase

of pension, unless a pension has already been granted to such claimant under the act, which pension he is then receiving.

5. When a pensioner under said act files a claim for increase of his said pension granted under this act, the increased pension, when granted, should commence from the date of the surgeon's certificate establishing the increased disability, made under the pending claim, as provided by section 4698½ R. S.

6. No claim rejected under the second section of this act will be reopened, except on an affidavit of the claimant alleging that a pensionable disability existed *at the date of filing the application* supported by evidence tending to prove said allegation.

7. If an application for pension under the second section of the act of June 27, 1890, be filed, and the proof shows that a pensionable disability under said act does not exist, no issue will be made thereunder, and the claim should be rejected.

8. If an application be filed under the section last mentioned, and it can not be shown that a pensionable disability existed when it was filed, but one is shown to have existed subsequently, before such disability can be pensioned a new declaration must be filed.

9. No affidavit filed in a claim will be accepted as an application unless it contains all the requisite allegations to constitute a valid original application for pension under the act.

Referring again to the case submitted with your communication, it will be observed that the same was not adjudicated upon the proper basis—*inability to earn a support.*

The pension was made to commence from February 17, 1892, the date of filing an affidavit for the purpose of having his claim (under the act of June 27, 1890) reopened. This affidavit must have been considered as a new application. This was erroneous, for the reason that it did not contain the requisite allegations for a valid application. The affidavit is confined to the existence of the disabilities for which he had claimed pension. It does not allege service, honorable discharge, that he is unable to earn a support, that his disabilities are not due to vicious habits, or that the disabilities are of a permanent character. It was not a good declaration, but was erroneously treated as such.

This claimant should be afforded an opportunity to show whether his disabilities existed in a pensionable degree at the date of filing his application, for if they did so exist he is entitled to pension from that date; otherwise his claim should have been rejected, and he could not be pensioned until a proper claim is filed.

All orders or rulings heretofore made, in so far as they conflict with the foregoing, are overruled and set aside, but it is not intended that this ruling shall be retroactive in effect, but that it shall apply to all cases hereafter adjudicated.

It is suggested, in order that no injustice may result, where a claim has been rejected for failure to prove the existence of a ratable disability at the date of filing the declaration therefor, the existence of such disability at a subsequent date being shown, that the claimant be notified of his right to file a second declaration.

---

ORDER NO. 155.

DEPARTMENT OF THE INTERIOR, BUREAU OF PENSIONS,
*Washington, D. C., July 1, 1890.*

Claimants are hereby authorized to apply to the Commissioner of Pensions to have their claims, under the provisions of the act approved June 27, 1890, placed upon the list of "completed files" for immediate consideration.

Such applications may be made by claimants or their attorneys of record and shall set forth—

(1) That the declaration has been made in due form, stating the proper service; the fact of honorable discharge and a period of service of not less than ninety days.

(2) That the proof establishes the fact that the disability alleged in the declaration is not due to the vicious habits of the claimant, and is of a permanent character to such an extent that he is unable to earn a support by manual labor.

(3) That the claimant has, with the authority of the Commissioner of Pensions, had a regular medical examination in respect to the disability described and claimed for in the declaration.

(4) That in the opinion of the claimant the claim is fully made out and complete.

If the application is made by the attorney of record for the placing of the claim on the "completed files" in addition to the other statements required, he shall certify upon honor that after a careful consideration of the case he is of the opinion that the same is complete.

Claims placed upon the "completed files" under this order will be considered in the order of the dates at which they are so placed. Claimants are requested, when their claims are complete, to make application to have them placed upon the "completed files" in accordance with the order above given.

This order *will not* apply to *rejected* cases.

GREEN B. RAUM,
*Commissioner.*

ORDER NO. 156.

DEPARTMENT OF THE INTERIOR, BUREAU OF PENSIONS,
*Washington, D. C., July 3, 1890.*

Calls upon the War Department for service or military history in claims under the provisions of the act of Congress approved June 27, 1890, will not be made whenever a complete report therefrom is now on file in this Bureau.

In the event that a further call is necessary the number of the prior claim, in each instance, must be given.

The necessary call will be made upon the distinctive color of paper (yellow) and in the form as provided.

GREEN B. RAUM,
*Commissioner.*

---

ORDER NO. 159.

DEPARTMENT OF THE INTERIOR, BUREAU OF PENSIONS,
*Washington, D. C., July 10, 1890.*

It is hereby directed that claims filed under the act of June 27, 1890, will be entered and numbered in each class in the following manner, namely:

When a prior claim is on file and still pending the new claim will take the number of the prior one, and if allowed it will take its proper number in the current certificate series of numbers; and when there is a prior claim on file which has been allowed the new one will take the certificate number of the old one, and, if allowed, the certificate number will be retained.

All others will be numbered under the current series of original numbers.

GREEN B. RAUM,
*Commissioner.*

---

ORDER NO. 160.

DEPARTMENT OF THE INTERIOR, BUREAU OF PENSIONS,
*Washington, D. C., July 14, 1890.*

In letter of July 9, 1890, the Assistant Secretary Bussey addressed to the Commissioner of Pensions, it is decided: "That pensions granted under the act of June 27, 1890, shall commence from the filing of the application in the Pension Office after the passage of the act.

"The enforcement of this rule of practice is necessary to the ends of justice. Informal applications * * * are of no value for fixing the date at which the pension shall commence under the law; nor will any other than a formal application be received."

For the purpose of carrying out this decision it is ordered that applications informal in the matter of authentication shall be returned to the applicants or their attorneys for correction.

GREEN B. RAUM,
*Commissioner.*

---

DEPARTMENT OF THE INTERIOR, BUREAU OF PENSIONS,
*Washington, D. C., August 30, 1890.*

TO CHIEFS OF DIVISIONS:

In construing House Resolution 213, relative to the construction of the act of July 1, 1890, in relation to oaths in pension and other cases, it is held—

That the said resolution applies to everything on file or to be filed in this Bureau.

GREEN B. RAUM,
*Commissioner.*

Set aside by decision of Secretary in claim of Clark H. Worcester (No. 289800), January 23, 1891, and supplemental opinion in letter to Commissioner, dated June 6, 1891.

ORDER NO. 162.

DEPARTMENT OF THE INTERIOR, BUREAU OF PENSIONS,
*Washington, D. C., September 26, 1890.*

For the purpose of securing the prompt adjudication of claims filed under the act of June 27, 1890, it is ordered as follows:

(1) That in all original invalid claims where the claimant, under the act of June 27, 1890, has a claim under previous laws granting pensions for service in the Army or Navy of the United States during the late war of the rebellion, whether upon the pending or rejected files, the proofs in that claim shall be considered in connection with the new claim; and where the proofs in the old claim and a medical examination, had within two years previous to the filing of the new claim, establish the facts of an honorable discharge after ninety days' service, and of the existence of a disability of a permanent character not the result of vicious habits, and which incapacitates the claimant from the performance of manual labor in such a degree as to render him unable to earn a support, the new claim shall be adjudicated upon the proofs on file.

But in all cases where the new declaration claims for disabilities which are not set forth in the original claim a medical examination shall be ordered where the interests of the claimant seem to require it, or where such examination is requested by the claimant.

(2) That in all original widows' cases when the claimant, under the act of June 27, 1890, has a claim filed under previous laws, whether upon the pending or rejected files, the proof in that claim shall be considered in connection with the new application. The points necessary to establish are the following:

First. An honorable discharge of a soldier after ninety days' service.

Second. The death of the soldier.

Third. The marriage of the claimant with the deceased soldier prior to June 27, 1890.

Fourth. The names and dates of the births of any surviving children of the soldier under 16 years of age.

Fifth. That the claimant has not remarried.

Sixth. That the claimant is without other means of support than her daily labor.

Upon consideration of the claim, if the evidence is found to be insufficient, a call will be made upon the claimant for all the evidence necessary to complete the claim. Claimants should supply such evidence as they may know to be wanting in advance of any call for the same.

(3) In claims under the act of June 27, 1890, where a claimant applies for a pension under said act for a disability of a permanent character, for which he is already pensioned at a rate less than $12 per month, under the laws granting pensions to soldiers or sailors of the United States who served during the war of the rebellion, and it shall appear from the proofs on file that he served for ninety days and was honorably discharged, a medical examination shall be ordered to determine to what degree his disabilities incapacitate the claimant from earning a support by manual labor, and the claim shall be adjudicated thereupon.

(4) In claims filed under the act of June 27, 1890, where it appears that the claimant is a pensioner at a less rate than $12 per month under previous laws granting pensions to soldiers or sailors of the United States who served during the war of the rebellion, the evidence filed in his admitted claim shall be considered in connection with his new claim, and if it shall appear from the declaration and proofs on file and a medical examination had within two years previous to the filing of the new claim, that the soldier is suffering from disabilities for which he is not pensioned, and that his disabilities are of a permanent character, which incapacitate him from earning a support by manual labor, and are not the result of his own vicious habits, the claim shall be adjudicated upon the proofs on file unless a new medical examination shall be deemed necessary or is requested by the claimant.

(5) In claims filed under the act of June 27, 1890, where the claimant has not applied for a pension under any other act, the proof required to establish a claim will be:

First. Proof of service for ninety days or more in the military or naval service of the United States during the late war of the rebellion, and an honorable discharge therefrom.

Second. Proof that the claimant is suffering from a mental or a physical disability of a permanent character, not the result of his own vicious habits, which incapacitates him from the performance of manual labor in such a degree as to render him unable to earn a support.

Medical evidence and the sworn statements of neighbors will be considered upon the question of disability, but a medical examination will be required to determine

the degree of disability of the claimant. An order for examination in such cases will be made as soon as the claim is reached in its order.

The facts of service and honorable discharge in all claims under the act of June 27, 1890, must be shown by reports from the records of the War Department which will be called for by the Bureau of Pensions.

(6) The cases of dependent parents under the act of June 27, 1890, require proof that the soldier's death was due to his service without reference to the length of such service; that he left no widow or minor children, and that such parent or parents are without other present means of support than their own manual labor or the contributions of others not legally bound for their support.

(7) Claims filed under the act of June 27, 1890, shall be taken up for adjudication in their regular order, and all necessary action had so that they shall be disposed of without delay.

GREEN B. RAUM,
*Commissioner.*

Approved:

JOHN W. NOBLE,
*Secretary of the Interior.*

---

ORDER NO. 163.

DEPARTMENT OF THE INTERIOR, BUREAU OF PENSIONS,
*Washington, D. C., October 7, 1890.*

Where a claim is filed under the act of June 27, 1890, and there is an old claim pending, chiefs of adjudicating divisions will see that the new claim is strapped to the old one, and that a proper record slip is made of the claims, which slip shall be kept in a file-box for easy reference.

The two claims will be considered together, and where it is found that the old claim should be allowed for a greater rate than the rate provided for under the act of June 27, 1890, the new claim shall be submitted by the adjudicating division for rejection in connection with the old claim, which shall be submitted for allowance; these recommendations to be made upon the same face brief

Where a claim is filed under the act of June 27, 1890, and there is an old claim pending which has been sent to the field for examination, the old claim shall be immediately called into the Bureau for consideration with the new claim.

Chiefs of adjudicating divisions will in all such cases notify the chief of the special examination division to call the old claim in.

GREEN B. RAUM,
*Commissioner.*

---

ORDER NO. 164.

[In regard to fixing rates of pensions under the act of June 27, 1890.]

DEPARTMENT OF THE INTERIOR, BUREAU OF PENSIONS,
*Washington, D. C., October 15, 1890.*

That all claimants under the act of June 27, 1890, showing a mental or physical disability or disabilities of a permanent character, not the result of their own vicious habits, and which incapacitate them from the performance of manual labor, rendering them unable to earn a support in such a degree as would be rated under former laws at or above $6 and less than $12, shall be rated the same as like disabilities of service origin; and that all cases showing a pensionable disability which if of service origin, would be rated at or above $12 per month, shall be rated at $12 per month.

GREEN B. RAUM,
*Commissioner.*

Approved:

CYRUS BUSSEY,
*Assistant Secretary.*

---

[Circular.]

DEPARTMENT OF THE INTERIOR, BUREAU OF PENSIONS.
*Washington, D. C., November 29, 1890.*

In a case where an appeal has been taken from the decision of this office and the papers are still in the possession of the Bureau they shall at once be applied to any

new claim filed by the claimant under the act of June 27, 1890. After the new claim has been disposed of the appeal can be entertained if the claimant so desires.

GREEN B. RAUM,
*Commissioner.*

---

RULING NO. 238.

DEPARTMENT OF THE INTERIOR, BUREAU OF PENSIONS,
*Washington, D. C., January 23, 1891.*

Under the provisions of the act of June 27, 1890, pensions are granted to disabled persons "who served ninety days or more in the military or naval service of the United States during the late war of the rebellion, and who have been honorably discharged therefrom."

It is plain from this language that a final honorable discharge from the service rendered during the war of the rebellion is necessary in claims under this act.

A dishonorable discharge from a service begun and rendered subsequent to the close of the war of the rebellion does not act as a bar to pension under the act of June 27, 1890, inasmuch as it does not relate to the service named in said act, and on account of which the pension itself is granted.

If, however, the service after the close of the war of the rebellion was incomplete by reason of desertion, pension under the act of June 27, 1890, can not be allowed until such service shall have been terminated by a discharge, either honorable or dishonorable

GREEN B. RAUM,
*Commissioner.*

---

RULING NO. 239.

DEPARTMENT OF THE INTERIOR, BUREAU OF PENSIONS,
*Washington, D. C., April 18, 1891.*

STATEMENT.

"The soldier, John C. Brown, Company K, Eighty-fifth Pennsylvania Infantry (certificate 475005), was pensioned at $6 per month from January 19, 1884, for injury of back. He filed application for increase of original disability.

"He filed claim for pension under the act of June 27, 1890, July 11, 1890, alleging disability from injury to back, the same disability for which he was pensioned and for which he had claimed increase. The examination had under these applications revealed a $12 disability.

"Query: Shall a certificate issue under application for increase, or under the application of act of June 27, 1890?"

The act of June 27, 1890, provides that "persons who are now receiving pensions under existing laws, or whose claims are pending in the Pension Office, may, by application to the Commissioner of Pensions, in such form as he may prescribe, showing themselves entitled thereto, receive the benefits of this act."

To allow the claim in question under the act of June 27, 1890, instead of under the pending claim for increase would confer a benefit upon the pensioner and would, in my opinion, be a lawful and proper act. It is true that in cases of this character the Bureau may be called upon eventually to reissue the pension certificate and allow under the general laws a greater sum per month than $12, but there seems to be no lawful authority for denying such reissue. As indicated above, I do not think that in the case in question the lawful title of the pensioner to the $12 per month from date of filing the application under the act of June 27, 1890, can be successfully combated, and to act contrary to this view would, in my opinion, involve the Bureau in as much work as will result from subsequent applications for reissue to change back to the old law.

There should not, however, be an allowance of the new-law claim to the exclusion of the claim for straight increase when no benefit accrues to the applicant thereby. Such action would not be taken when the attorney is the only beneficiary.

In all cases of the character of the one referred to herein both claims (the straight increase and the one under the act of June 27, 1890) should be submitted for settlement together in order that proper discrimination may be made between them upon the lines laid down above.

ANDREW DAVIDSON,
*Acting Commissioner.*

RULING NO. 240.

DEPARTMENT OF THE INTERIOR, BUREAU OF PENSIONS,
*Washington, D. C., May 5, 1891.*

Pensions to persons under 16 years of age should be granted because of their infancy. The question of the permanent disability of a minor as being insane, idiotic, or otherwise permanently helpless, under the act of June 27, 1890, should not be passed upon by this office in cases where the minor is under 16 years of age, but should be considered in connection with an application for a continuance of the pension after the minor shall have reached the age of 16 years; and in such cases there should be a medical examination so as to establish the fact of the disability.

GREEN B. RAUM,
*Commissioner.*

---

ORDER NO. 169.

DEPARTMENT OF THE INTERIOR, BUREAU OF PENSIONS,
*Washington, D. C., May 26, 1891.*

The former custom of allowing agents, attorneys, and other persons practicing before this Bureau to charge a sum not in excess of $2 for postage in any one claim in which they may be the recognized agent has been abrogated.

Hereafter, and dating from April 22, 1891, in lieu of the former custom or practice of allowing postage in original and increase pension claims, it has been decided, with the approval of the Secretary, not to allow a sum in excess of 50 cents for postage used in the prosecution of any one claim; but a compliance with such request of the agent or attorney or other person is optional and not obligatory on the part of the claimant.

No attorney will be allowed to demand a sum for postage as a right, nor refuse to prosecute a claim where the request for postage is not answered.

CHARLES P. LINCOLN,
*Acting Commissioner.*

---

DEPARTMENT OF THE INTERIOR, BUREAU OF PENSIONS,
*Washington, D. C., September 16, 1891.*

The chiefs of the five adjudicating divisions will at once cause an examination to be made of the files for cases under the act of June 27, 1890, with a view of having immediate action in all cases which may have been passed over and not considered in the order of their filing. Where such cases are found in connection with claims filed under old laws the procedure shall be in accordance with Order No. 162.

Great care is enjoined in taking up cases under said act for making calls and ordering examinations that attention be given them in the order of their filing.

GREEN B. RAUM,
*Commissioner.*

---

DEPARTMENT OF THE INTERIOR, BUREAU OF PENSIONS,
*Washington, D. C., October 17, 1891.*

TO CHIEFS OF DIVISIONS:

In claims under the act of June 27, 1890, when more than one service is alleged, the final service in the war of the rebellion, if it covers the full period of ninety days, should only appear at the head of the brief.

In cases where all the service was not mentioned in the application, but appears in a statement subsequently filed, a slip should be sent by the adjudicating division to the record division containing the full service alleged, for completion of the record.

Great care should be taken to obtain from the claimant a specific statement showing whether he or she has ever applied for pension previous to the application under the act of June 27, 1890, and, if so, full data should be given in order that such claim may be identified.

ANDREW DAVIDSON,
*Acting Commissioner.*

(See order honorable Commissioner December 5, 1891, modifying this order.)

ORDER No. 171.

DEPARTMENT OF THE INTERIOR, BUREAU OF PENSIONS,
*Washington, D. C., November 16, 1891.*

In the adjudication of claims under the act of June 27, 1890, the rank as stated by the applicant in his declaration will be accepted as correct, unless there is a discrepancy between the declaration and the report from the War Department.

In the case of an officer who has filed a declaration his rank can be taken from the Volunteer Army Register, unless the report from the War Department conflicts with the declaration.

Since June last the War Department furnishes the rank of the applicant at the date of muster out.

GREEN B. RAUM,
*Commissioner.*

---

DEPARTMENT OF THE INTERIOR, BUREAU OF PENSIONS,
*Washington, D. C., November 19, 1891.*

TO CHIEFS OF DIVISIONS:

The position taken by the Department in the claim of Hannah Fitzgerald, guardian of the minors of Patrick Fitzgerald, under the act of June 27, 1890 (decided April 8, 1891), wherein it was held that minors under said act should show dependence in a pecuniary point of view, is erroneous. It is now held, that proof of such dependence is *not* necessary under the law in the case of a minor child under sixteen years of age.

Let your action in such cases henceforth be in accordance therewith, and paragraph 10 (Circular Call No 16), without force and effect.

GREEN B. RAUM,
*Commissioner.*

---

ORDER.

DEPARTMENT OF THE INTERIOR, BUREAU OF PENSIONS,
*Washington, D. C., December 2, 1891.*

In considering the Navy Service pension claims under sections 4756 and 4757 of the Revised Statutes of the United States, the Chief of the Old War and Navy Division will require a slip to be attached to the face of the brief containing the words "Navy Service Pension," and when the cases are properly prepared for the Board of Review they will be sent directly to the desk of the Chief of the Board.

The Chief of the Board of Review will cause these cases to be examined immediately, and if found to be properly allowed will have the rates of pension entered upon the brief, and transmit the claims to the Certificate Division for the issuance of certificates without delay.

GREEN B. RAUM,
*Commissioner.*

---

DEPARTMENT OF THE INTERIOR, BUREAU OF PENSIONS,
*Washington, D. C., December 5, 1891.*

TO CHIEFS OF DIVISIONS:

Since the Order of October 17, 1891, was issued by Acting Commissioner Davidson, a class of cases has been brought to my attention which seems to be exceptional, and to require a slight modification of the first clause of said order.

Cases where the soldier was pensioned for disability as of one service, and applies under the act of June 27, 1890, on account of a subsequent service, whether either service was in the Army or Navy, or both military or both naval, should have both services entered on the brief.

Cases where during the term of enlistment there was one or more transfers from one regiment to another, there having been but one discharge, should have each regiment entered on the brief.

Cases where the soldier was pensioned as of one service and the widow applies under the act of June 27, 1890, as of a subsequent service, should have both services entered on the brief.

Cases where the last service did not cover ninety days should have the next preceding service entered on the brief also, if sufficient to make ninety days.

GREEN B. RAUM,
*Commissioner.*

DEPARTMENT OF THE INTERIOR, BUREAU OF PENSIONS,
*Washington, D. C., February 16, 1892.*

CHIEFS ADJUDICATING DIVISIONS:

I have received a number of complaints to the effect that claims filed under the act of June 27, 1890, during the year 1891 have been allowed, while many claims filed in July, August, and September of 1890 are left undisposed of.

For the purpose of seeing that claims are acted upon in the order of their filing, in respect to making calls upon the War Department, ordering medical examinations, and calls upon the claimants for additional evidence, you will cause an immediate examination to be made of your files to see that no cases have been missed in going over your files, and if any such have been missed, they shall be taken up and put in the state of forwardness to which their prior filing and completion entitle them. You will report the number of cases found out of place according to the classes.

GREEN B. RAUM,
*Commissioner.*

---

ORDER NO. 178.

DEPARTMENT OF THE INTERIOR, BUREAU OF PENSIONS,
*Washington, D C., March 14, 1892.*

Claims under act of June 27, 1890, will be adjudicated in the division that has charge of the claim under the general law; *Provided*, That every case in which there is filed or may arise any claim for pension or bounty-land on account of service in the regular army, the navy or marine corps, or in any old war or miscellaneous service belonging to the old war and navy division, shall be transferred to that division for adjudication. Claims belonging to the old war and navy division under this rule, will be transferred at once to that division and a slip left in their present place in files showing transfer of papers, to enable the evidence that may come in to follow the case.

GREEN B. RAUM,
*Commissioner.*

---

DEPARTMENT OF THE INTERIOR, BUREAU OF PENSIONS,
*Washington, D. C., April 26, 1892.*

TO CHIEFS OF DIVISIONS:

Hereafter in noting disabilities shown in evidence, or in medical examinations filed prior to the date of the filing of the declaration under the act of June 27, 1890, but not alleged in the latter, it is directed that an additional sheet be attached to the brief just preceding the examining surgeon's certificates, bearing the following printed heading:

"The following named causes of disability are found in the evidence, or in the certificates of medical examinations, filed prior to ———, 18—, the date of filing of the declaration under the act of June 27, 1890."

Further, upon this sheet should be noted the apparent permanent disabilities not due to vicious habits, to be considered in fixing the rates found in said evidence and certificates of examination. This sheet will be removed with the certificates when the papers are inspected.

This order to take the place of the order of February 16, 1892, issued by the acting chief of the Board of Review, in regard to entering disabilities on the face brief.

GREEN B. RAUM,
*Commissioner.*

---

ORDER.

DEPARTMENT OF THE INTERIOR, BUREAU OF PENSIONS,
*Washington, D. C., June 2, 1892.*

It has been found that a number of claimants have filed two or more applications for pension under the act of June 27, 1890.

In all such cases the first application filed shall receive the consideration of the office with a view of having it completed, and the other application shall be rejected and a proper notice of rejection, and the cause therefor, given.

In all cases where a second original application under said law has been filed, after the first application has been allowed, the second application shall be treated as a claim for an increase of pension, and not as an original application.

GREEN B. RAUM,
*Commissioner.*

RULING NO. 248.

[In reclaim of (Cert. No. 3,082) widow of Robert Robertson, U. S. Marine Corps.]

DEPARTMENT OF THE INTERIOR, BUREAU OF PENSIONS,
*Washington, D. C., June 8, 1892.*

Where a widow of a soldier is drawing a pension for a minor child, and before the child arrives at the age of 16 years he receives an injury which results in the child becoming permanently helpless, as contemplated by the act of June 27, 1890, the application of the widow to have the pension continued may be filed before the child arrives at 16 years of age, but the pension will be continued from the date the child is 16 years old.

GREEN B. RAUM.
*Commissioner.*

---

ORDER NO. 183.

DEPARTMENT OF THE INTERIOR, BUREAU OF PENSIONS,
*Washington, D. C., August 11, 1892.*

It is hereby ordered that the applications of dependent parents filed since June 27, 1890, in respect to the service of noncommissioned officers and enlisted men shall be considered as having been filed under said act.

GREEN B. RAUM,
*Commissioner.*

---

DEPARTMENT OF THE INTERIOR, BUREAU OF PENSIONS,
*Washington, D. C., September 29, 1892.*

The CHIEFS OF ADJUDICATING DIVISIONS:

Please report to me this morning the dates to which orders for medical examinations have been ordered in your respective divisions in original cases, in increase cases under the old laws, and in increase cases under the act of June 27, 1890.

I have received a number of letters in the past few days asking for orders for medical examinations, which indicate that we are very far behind with some of this work.

GREEN B. RAUM,
*Commissioner.*

---

[Circular.]

DEPARTMENT OF THE INTERIOR, BUREAU OF PENSIONS,
*Washington, D. C., October 22, 1892.*

The recent count is accepted to show number of pending cases now in pending files, and as additional disability cases in admitted files are not counted, nor pending old law claims when claims under act of June 27, 1890, have been admitted.

Chiefs of adjudicating divisions will please hereafter note as "reopened" all cases called from admitted files on evidence furnished, if the case is retained in the files of the division as a pending claim.

A. W. FISHER,
*Chief Clerk.*

---

RULING NO. 250.

DEPARTMENT OF THE INTERIOR, BUREAU OF PENSIONS,
*Washington, D. C., December 5, 1892.*

[In re No. 487748; George W. Stillwill, father of James H. Stillwill, Company B, Sixty-seventh New York Volunteers.]

Referring to the clause, "it shall be necessary only to show by competent and sufficient evidence that such parent or parents are without other means of support than their own manual labor," contained in the first section of the act of June 27, 1890, I hold that hereafter, in construing the term "manual labor," it is proper to include all the usual modes of earning a support, by manual labor or mental effort, and will include a clerical employment.

GREEN B. RAUM,
*Commissioner.*

[Circular:]

DEPARTMENT OF THE INTERIOR, BUREAU OF PENSIONS,
*Washington, D. C., December 12, 1892.*

When the claimant is receiving $12 or more per month, and files claim under act of June 27, 1890, whether claim for increase under old law is pending or not, the new law claim will be rejected by the adjudicating division without preparing a brief, and proper notice shall be sent to the claimant, and the action taken noted on jacket.

GREEN B. RAUM,
*Commissioner.*

---

## RULING NO. 251.

DEPARTMENT OF THE INTERIOR, BUREAU OF PENSIONS,
*Washington, D. C., December 19, 1892.*

In the case of Jacob Smith, certificate No. 512129, Company F, Seventeenth Ohio Volunteers: As this claimant alleged a disability from rheumatism in his declaration under the act of June 27, 1890, but was not examined under said act, but was allowed a pension under the same upon a medical examination made in his old law claim, he shall be allowed a new examination for said disability upon a declaration for an increase of his new law pension; or, if that has not been made, upon a motion under oath to reopen said case, and if upon the new examination a disability is found the claim may be reopened and a pension allowed for said disability, if the claimant shows by competent evidence its existence at the date of the filing of his original declaration under the act of June 27, 1890.

Where a declaration has been filed alleging a certain disability, but such disability is not found upon a medical examination, and the case is afterwards reopened upon sworn statements as to the existence of the disability, and a new medical examination is had, which establishes the existence of the disability at the date of the examination, and upon a consideration of the case the medical division finds the disability in a pensionable degree, the pension, if allowed, shall begin with the date of the second examination.

In cases where an application has been filed under the act of June 27, 1890, and has been rejected, and a second declaration has been filed under said act by the claimant, and a second medical examination has been made, the case shall be considered under the second declaration and examination, and if the claimant is found to have a pensionable disability the pension shall date from the filing of the second declaration.

Very respectfully,

GREEN B. RAUM,
*Commissioner.*

---

## RULING NO. 253.

DEPARTMENT OF THE INTERIOR, BUREAU OF PENSIONS,
*Washington, D. C., December 30, 1892.*

In the case of James Riley, private Company A, Third Regiment, Rhode Island Volunteer Cavalry, No. 1078924, act of June 27, 1890, the Commissioner has ruled that as this claimant was sentenced to five years' confinement at Fort Jefferson, Fla., as the result of a trial by court-martial, and he was placed in confinement at said fort June 3, 1865, and was discharged March 5, 1866, under Special Orders No. 25, par. 12, A. G. O., January 19, 1866, with the facts above stated noted upon his discharge, such discharge was dishonorable, and the claimant has no pensionable status under the act of June 27, 1890, for the reason that he was not honorably discharged from the service.

And the Commissioner has held in the case of Henry Geiger, No. 956000, Company F, Fifth Iowa Cavalry, act of June 27, 1890, that as he was discharged in disgrace from the service by the major-general commanding the Department, for disgraceful and mutinous conduct, this discharge was dishonorable, and said claimant has no pensionable status under the act of June 27, 1890.

The Commissioner also holds that in cases where a soldier was mustered out, because of his trial, conviction, and punishment by the civil authorities, such discharge is dishonorable, and claimants in that category have no pensionable status under the act of June 27, 1890.

GREEN B. RAUM,
*Commissioner.*

RULING NO. 256.

DEPARTMENT OF THE INTERIOR, BUREAU OF PENSIONS,
*Washington, D. C.*

For the guidance of the Bureau the Secretary of the Interior, under date of March 6, 1893, in the claim of Charles B. Mullins, late of Company F, Eighty-fifth Indiana Volunteers, prescribed the following rules for observation in the adjudication of claims under the second section of the act of June 27, 1890, of similar character:

"(1) In the absence of conclusive evidence showing that the increased degree of disability reported by the examining surgeons existed prior thereto, the increased rate shall not commence prior to the date of the medical examination showing title to the same.

"(2) If the required evidence is not in the case when the claim is adjudicated, and the claimant elects to take pension under the act of June 27, 1890, the issue under said act shall allow the old law rate from the date of filing the application, to the date of such medical examination, and thereafter the increased rate authorized by the report of the medical examination, deducting payment already made.

"(3) Since this would not result in any benefit to the applicant other than that which would accrue to him if the application under the new law had been an application for increase under the old law, no issue under the new law should be made, unless the claimant requests it, but his application under the new will be accepted as an application for increase under the old law, and the attorney's fee will be allowed accordingly.

"In all claims under section 2 of the act of June 27, 1890, where, from the nature of the disability, or from the length of time elapsing between the date of filing the application and the date of the medical examination, the degree of disability during said period can not be determined by the medical division, the applicant should be required to furnish evidence showing the same, and it shall be within the province of said division to fix the rate of pension in accordance with the degree of disability thus proved.

"It is directed that the foregoing rules be followed by your Bureau in adjudicating claims under the act of June 27, 1890."

GREEN B. RAUM,
*Commissioner.*